

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF TURNER
WATER SYSTEM

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CASE NO. 96-496

ALLEGED VIOLATION OF KRS
CHAPTER 278

O R D E R

Turner Water System ("the System") is engaged in the distribution of water to the public for compensation and is subject to the regulatory jurisdiction of the Commission pursuant to KRS 278.040.

On July 10, 1996, a periodic inspection was made of the System's operations by Commission Staff. According to the inspection report, the System had increased its flat rate charges to its customers from \$9.00 to \$12.00 per month without the Commission's approval. As the new rate was not a part of the System's filed tariff, the System appeared to be in violation of KRS 278.160(2), which states:

No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

James Turner, owner of the system, filed a response to the inspection report on August 6, 1996. According to Mr. Turner, he had posted notice of the rate increase in the local newspaper two months before it took effect. Each customer was also

personally notified of the increase. Mr. Turner said that the increase was placed in effect because he felt it was necessary. Mr. Turner stated that the Commission would be notified prior to any future increase in rates.

The System was directed to cease charging the unauthorized rates by Order of the Commission on October 28, 1996. The same Order directed the System to submit a written response to the allegations against it, to file a list of all unauthorized charges collected along with each customer's name and address, to file copies of the notices that had been given, and to appear at a hearing scheduled for December 20, 1996, to show cause why it should not be penalized pursuant to KRS 278.990 for its failure to comply with KRS 278.160.

Mr. Turner responded on November 15, 1996. He informed the Commission that the System had ceased charging the unauthorized rates, and filed a list of all unauthorized charges collected and the names and addresses of all the customers affected, along with the signatures of every customer affirming that they had been notified prior to the three dollar increase. Mr. Turner explained that the rates had been increased due to the fact that the System had been operating at a loss as a result of increases in the cost of material and supplies. He said that the System has not had any water quality violations for three years, and that he has worked hard to keep it operating for the people of the community until it could be taken over by a larger water system. Mr. Turner added that he does not make a profit off the System and would be glad for someone else to take over the system as he is in poor health. In conclusion, Mr. Turner stated that he did not realize that by increasing the rates he was breaking the law. Had

he known that the Commission's approval was needed prior to a rate increase, he would have notified the Commission prior to doing so.

On December 16, 1996, Mr. Turner submitted a letter to the Commission requesting that it cancel the hearing scheduled for December 20 and base its decision on the existing record. Mr. Turner was of the opinion that he, as the owner of the System and the one solely responsible for its day-to-day operations and its actions, could offer no additional testimony. He reiterated that the System did increase its flat rate charge from \$9.00 to \$12.00 per month without the Commission's approval, but that at the time the rates were raised and placed in effect, he did not realize that Commission approval was required. He felt the increase was necessary as the System had been operating at a loss for some time. Mr. Turner again stated that he does not make a profit off the System, but tries to provide a service to his community.

In the same letter, Mr. Turner stated that he realized a penalty could be assessed and that the System could be required to refund the amount collected in unauthorized charges, but requested that the Commission consider the circumstances under which the rates were increased and the burden that a refund of those charges would place on his small system in making its final decision. As Mr. Turner pointed out, according to the System's annual reports on file with the Commission, Turner operated at a loss of \$4,538 in 1995 despite the rate increase. In 1994, the system operated at a loss of \$8,886.

The Commission treated Mr. Turner's letter as a motion, which it granted on December 19, 1996. The hearing was cancelled and the case submitted to the Commission based on the existing record.

The Commission, having reviewed the evidence of record and being otherwise sufficiently advised, finds that:

1. The System increased its flat monthly rate by \$3.00 effective January 1995 without the Commission's approval. As a result, the System charged its customers rates which were greater than those prescribed in its filed schedules in violation of KRS 278.160(2).

2. After being ordered to do so by the Commission on October 28, 1996, the System ceased charging the unauthorized rate. Between January 1995 and this date, according to information submitted by Mr. Turner, 53 customers were, for various periods, billed the unauthorized rate.

3. The total amount collected in unauthorized rates, from the information available, appears to have been \$2,751.

4. According to the System's 1995 Annual Report to the Commission, for 1994, prior to the unauthorized rate increase, it had operating revenues of \$5,866 and operating expenses of \$14,752, resulting in a net loss of \$8,886.

5. According to the System's 1995 Annual Report to the Commission, it had operating revenues of \$6,192 and operating expenses of \$10,730 for that year, resulting in a net loss of \$4,538.

6. According to the System's 1995 Annual Report to the Commission, its total net utility plant value, as well as its total assets, is \$5,000.

7. To require the System to refund the amount collected in unauthorized rates to its customers would place an undue burden on it, especially in light of the fact that the customers received prior notice of, and were not opposed to, the rate increase.

8. Because of the System's financial condition, Mr. Turner should immediately seek Commission Staff's assistance in filing a rate case using the alternative rate adjustment procedure for small utilities pursuant to 807 KAR 5:076.

9. For violating KRS 278.160, the System should pay a penalty in the amount of \$25.00 pursuant to KRS 278.990.

IT IS THEREFORE ORDERED that the System is assessed a penalty of \$25.00 for its violation of KRS 278.160(2). The penalty shall be paid within 15 days of the date of this Order by certified check or money order made payable to the Kentucky State Treasurer and mailed to the Office of General Counsel, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602.

Done at Frankfort, Kentucky, this 4th day of March, 1997.

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner

ATTEST:


Executive Director